IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.395 OF 2002

The Commissioner of Income Tax
Mumbai - III .. Appellant.
V/s.
M/s.Gayatri Cement & Chemical
Industries P. Limited .. Respondent.

Mr.B.M. Chatterjee with Mr.R. Asokan i/b. H.D. Rathod for the appellant.

Mr.Sameer Dalal for the respondent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 2ND DECEMBER, 2004.

P.C. :

Heard.

2. The Tribunal in the impugned order observed thus :

> ". It was submitted by the learned counsel that the notice under section 176(3) is required only when the entire business as a whole is discontinued. Reliance was placed on the decision of Highland Railway Vs. Special Commissions, 2TC 151. In this case, it was held that if a part of the assessee's business becomes unprofitable and is dropped, either permanently or for the time being, that would not mean discontinuance of the business or undertaking. I have noted that the assessee submitted the accounts for the entire period. The accounting year was ended on 31/3/1993. This all shows that the assessee continued the business till the last date of the

> accounting year. Just because part of the business was closed, it won't tantamount to discontinuance of business. As such, in my opinion, no default was committed by the assessee. He may therefore be exonerated from the rigour of penalty. I direct the A.O. to delate the same."

3. We find no legal infirmity in the order of the Income Tax Appellate Tribunal.

4. No substantial question of law arises in this appeal. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)